

110TH CONGRESS
1ST SESSION

S. 2079

To amend the Public Utility Regulatory Policies Act of 1978 to establish an energy efficiency resource standard for retail electricity and natural gas distributors.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2007

Mr. SCHUMER introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Public Utility Regulatory Policies Act of 1978 to establish an energy efficiency resource standard for retail electricity and natural gas distributors.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. ENERGY EFFICIENCY RESOURCE STANDARD**
4 **FOR RETAIL ELECTRICITY AND NATURAL**
5 **GAS DISTRIBUTORS.**

6 Title VI of the Public Utility Regulatory Policies Act
7 of 1978 (16 U.S.C. 2601 et seq.) is amended by adding
8 at the end the following:

1 **“SEC. 610. ENERGY EFFICIENCY RESOURCE STANDARD FOR**
2 **RETAIL ELECTRICITY AND NATURAL GAS DIS-**
3 **TRIBUTORS.**

4 “(a) DEFINITIONS.—In this section:

5 “(1) BASE QUANTITY.—The term ‘base quan-
6 tity’, with respect to a retail electricity or natural
7 gas distributor, means the total quantity of electric
8 energy or natural gas delivered by the retail elec-
9 tricity or natural gas distributor to retail customers
10 (other than to an electricity distributor for purposes
11 of electric generation) during the most recent cal-
12 endar year for which information is available.

13 “(2) CHP SAVINGS.—

14 “(A) IN GENERAL.—The term ‘CHP sav-
15 ings’ means the increment of electric output of
16 a new combined heat and power system that is
17 attributable to the higher efficiency of the com-
18 bined system (as compared to the efficiency of
19 separate production of the electric and thermal
20 outputs), as determined in accordance with
21 such regulations as the Secretary may promul-
22 gate.

23 “(B) RELATED DEFINITION.—For pur-
24 poses of subparagraph (A), the term ‘new com-
25 bined heat and power system’ means a system
26 that uses the same energy source for the gen-

eration of electrical or mechanical power and the production of steam or another form of useful thermal energy, if—

“(i) the facility at which the system is used meets such requirements relating to efficiency and other operating characteristics as the Secretary may promulgate by regulation;

“(ii) the net wholesale sales of electricity by the facility will not exceed 50 percent of total annual electric generation by the facility; and

“(iii) the facility commences operation after June 30, 2007.

“(3) CUSTOMER FACILITY SAVINGS.—The term ‘customer facility savings’ means a reduction in end-use electricity or natural gas consumption (including recycled energy savings) at a facility of an end-use consumer of electricity or natural gas served by a retail electricity or natural gas distributor, as compared to—

“(A) consumption at that facility during a base year;

“(B) in the case of new equipment, regardless of whether the new equipment replaces ex-

1 isting equipment at the end of the useful life of
2 the existing equipment, consumption by the new
3 equipment of average efficiency; or

4 “(C) in the case of a new facility, con-
5 sumption at a reference facility.

6 “(4) ELECTRICITY SAVINGS.—The term ‘elec-
7 tricity savings’ means, as determined in accordance
8 with such regulations as the Secretary may promul-
9 gate—

10 “(A) customer facility savings of electricity
11 consumption, adjusted to reflect any associated
12 increase in fuel consumption at the facility;

13 “(B) reductions in distribution system
14 losses of electricity achieved by a retail elec-
15 tricity distributor, as compared to losses attrib-
16 utable to new or replacement distribution sys-
17 tem equipment of average efficiency (as defined
18 in regulations to be promulgated by the Sec-
19 retary); and

20 “(C) CHP savings.

21 “(5) NATURAL GAS SAVINGS.—The term ‘nat-
22 ural gas savings’ means, as determined in accord-
23 ance with such regulations as the Secretary may
24 promulgate—

1 “(A) customer facility savings of natural
2 gas, adjusted to reflect any associated increase
3 in electricity consumption at the facility; and

4 “(B) reductions in leakage, operational
5 losses, and gas fuel consumption in the oper-
6 ation of a gas distribution system achieved by
7 a retail gas distributor, as compared to similar
8 losses during a base year.

9 “(6) RECYCLED ENERGY SAVINGS.—The term
10 ‘recycled energy savings’ means a reduction in elec-
11 tricity or natural gas consumption that is attrib-
12 utable to electrical or mechanical power (or both), or
13 thermal energy, produced by modifying an industrial
14 or commercial system that was in operation before
15 July 1, 2007, in order to recapture energy that
16 would otherwise be wasted.

17 “(7) RETAIL ELECTRICITY OR NATURAL GAS
18 DISTRIBUTOR.—The term ‘retail electricity or nat-
19 ural gas distributor’ means a person or Federal or
20 State agency that—

21 “(A) owns or operates an electric or nat-
22 ural gas distribution facility; and

23 “(B) using the facility, delivers to con-
24 sumers of the energy that are not affiliated
25 with, and that are not lessees or tenants of, the

1 person or agency, during the most recent cal-
 2 endar year for which data are available—

3 “(i) more than 800,000 megawatt
 4 hours of electricity; or

5 “(ii) more than 1,000,000,000 cubic
 6 feet of natural gas.

7 “(8) VERIFIED ELECTRICITY OR NATURAL GAS
 8 SAVINGS.—The term ‘verified electricity or natural
 9 gas savings’ means electricity savings or natural gas
 10 savings that meet the requirements of subsection (c).

11 “(b) PERFORMANCE STANDARD.—

12 “(1) IN GENERAL.—For calendar year 2010,
 13 and each calendar year thereafter, each retail elec-
 14 tricity or natural gas distributor shall submit to the
 15 Secretary, by not later than March 31 of the cal-
 16 endar year after the applicable calendar year, a
 17 number of credits issued under subsection (d) equal
 18 to the following percentages of the base quantity of
 19 the retail electricity or natural gas distributor appli-
 20 cable to the calendar year:

Year	Electricity Credits (%)	Natural Gas Credits (%)
2010	0.5	0.3
2011	1.25	0.6
2012	2.0	1.0
2013	3.0	1.5
2014	4.0	2.0

Year	Electricity Credits (%)	Natural Gas Credits (%)
2015	5.0	2.5
2016	6.0	3.0
2017	7.0	3.5
2018	8.0	4.0
2019	9.0	4.5
2020	10.0	5.0

1 “(2) SUBSEQUENT CALENDAR YEARS.—For cal-
2 endar year 2021 and each calendar year thereafter,
3 each retail electricity or natural gas distributor shall
4 submit to the Secretary, by not later than March 31
5 of the calendar year after the applicable calendar
6 year, a number of credits issued under subsection
7 (d) equal to such a percentage of the base quantity
8 of the retail electricity or natural gas distributor as
9 the Secretary may determine, by regulation, but in
10 no case less than the applicable percentage for cal-
11 endar year 2020.

12 “(c) MEASUREMENT AND VERIFICATION OF SAV-
13 INGS.—Not later than June 30, 2009, the Secretary shall
14 promulgate regulations regarding measurement and
15 verification of electricity and natural gas savings under
16 this section, including—

17 “(1) procedures and standards for defining and
18 measuring electricity savings and natural gas sav-

1 ings that will be eligible to receive credits under sub-
2 section (d)(2), which shall—

3 “(A) specify the types of energy efficiency
4 and energy conservation measures that will be
5 eligible for the credits;

6 “(B) require that energy consumption esti-
7 mates for customer facilities or portions of fa-
8 cilities in the applicable base and current years
9 be adjusted, as appropriate, to account for
10 changes in weather, level of production, and
11 building area;

12 “(C) account for the useful life of elec-
13 tricity savings measures;

14 “(D) include deemed savings values for
15 specific, commonly-used efficiency measures;

16 “(E) specify the extent to which electricity
17 savings and natural gas savings attributable to
18 measures carried out before July 1, 2007, are
19 eligible to receive credits under this section; and

20 “(F) exclude savings that—

21 “(i) are not properly attributable to
22 measures carried out by the entity seeking
23 the credit (or a designated agent of the en-
24 tity); or

1 “(ii) have already been credited under
2 this section to another entity; and

3 “(2) procedures and standards for third-party
4 verification of reported electricity savings or natural
5 gas savings.

6 “(d) CREDIT AND TRADING SYSTEM.—

7 “(1) CREDIT REGULATIONS.—

8 “(A) IN GENERAL.—Not later than June
9 30, 2009, the Secretary shall promulgate regu-
10 lations regarding—

11 “(i) the issuance of credits under this
12 section;

13 “(ii) a national credit trading system;
14 and

15 “(iii) a system for independent moni-
16 toring of the market for the credits.

17 “(B) LIMITATIONS.—In promulgating reg-
18 ulations under subparagraph (A), the Secretary
19 may establish such limitations as the Secretary
20 determines to be appropriate with respect to the
21 extent to which a retail electricity or natural
22 gas distributor may achieve compliance with
23 subsection (b) by submitting credits issued for
24 electricity or natural gas savings that are not

1 customer facility savings at a facility served by
2 the retail electricity or natural gas distributor.

3 “(C) REQUIREMENT.—In promulgating
4 regulations under subparagraph (A), the Sec-
5 retary shall provide for the issuance of appro-
6 priate credits for the mechanical output of new
7 combined heat and power systems.

8 “(2) ISSUANCE OF CREDITS.—In accordance
9 with the regulations promulgated under paragraph
10 (1), the Secretary shall issue credits for—

11 “(A) verified electricity and natural gas
12 savings achieved by a retail electricity or nat-
13 ural gas distributor in a certain calendar year;
14 and

15 “(B) verified electricity and natural gas
16 savings achieved by other entities (including
17 State agencies), if—

18 “(i)(I) no retail electricity or natural
19 gas distributor paid a substantial portion
20 of the cost of achieving the savings; or

21 “(II) if a retail electricity or natural
22 gas distributor paid a substantial portion
23 of the cost of achieving the savings, the re-
24 tail electricity or natural gas distributor

1 has waived any entitlement to the credit;
2 and

3 “(ii) the measures used to achieve the
4 verified electricity and natural gas savings
5 were installed or placed in operation by the
6 entity seeking certification (or a designated
7 agent of the entity).

8 “(3) VALUE OF CREDITS.—A credit issued by
9 the Secretary under this subsection shall have a
10 value of—

11 “(A) 1,000 kilowatt-hours, in the case of
12 an electricity savings credit; or

13 “(B) 10 therms, in the case of a natural
14 gas savings credit.

15 “(4) FEE.—

16 “(A) IN GENERAL.—Subject to subpara-
17 graph (B), the Secretary shall charge the recipi-
18 ent of a credit under this section a fee in an
19 amount equal to, as determined by the Sec-
20 retary, the administrative costs of issuing, re-
21 cording, monitoring the sale or exchange of,
22 and receiving the credit.

23 “(B) MAXIMUM AMOUNT.—Notwith-
24 standing subparagraph (A), the amount of a fee

1 under this paragraph shall be not more than, as
2 applicable—

3 “(i) \$1 for a electric credit; or

4 “(ii) \$0.10 for a natural gas credit.

5 “(C) USE OF FUNDS.—The Secretary shall
6 use fees received under this paragraph for the
7 administrative costs of carrying out this sub-
8 section.

9 “(5) CREDIT SALE AND USE.—In accordance
10 with regulations promulgated under paragraph (1),
11 any entity that receives a credit under this section
12 may—

13 “(A) sell or transfer the credit to any other
14 entity; or

15 “(B) use the credit to achieve compliance
16 with the performance standard under sub-
17 section (b).

18 “(e) BUYOUT OPTION.—In lieu of submitting credits
19 to achieve compliance with an applicable performance
20 standard under subsection (b) for a calendar year, a retail
21 electricity or natural gas distributor may pay to the Sec-
22 retary, by not later than March 31 of the following cal-
23 endar year, a buyout fee in an amount equal to, as ad-
24 justed for inflation in accordance with such regulations as
25 the Secretary may promulgate—

1 “(1) \$20 for each electricity savings credit oth-
2 erwise required to be submitted by the retail elec-
3 tricity or natural gas distributor; or

4 “(2) \$2 for each natural gas savings credit oth-
5 erwise required to be submitted by the retail elec-
6 tricity or natural gas distributor.

7 “(f) STATE ADMINISTRATION.—On receipt of an ap-
8 plication from the Governor of a State, the Secretary may
9 authorize the State to administer and enforce an energy
10 efficiency program in the State in lieu of the program
11 under this section, if the Secretary determines that the
12 State program will achieve electricity savings and natural
13 gas savings at least equivalent to the electricity savings
14 and natural gas savings that would be required to be
15 achieved by electricity and natural gas distributors in the
16 State under this section.

17 “(g) INFORMATION AND REPORTS.—In accordance
18 with section 13 of the Federal Energy Administration Act
19 of 1974 (15 U.S.C. 774), the Secretary may require any
20 retail electricity or natural gas distributor or other entity
21 that receives a credit under this section, and any other
22 entity as the Secretary determines to be necessary, to pro-
23 vide such information and reports, and access to any
24 records or facility of the entity, as the Secretary deter-
25 mines to be appropriate to carry out this section.

1 “(h) ENFORCEMENT.—

2 “(1) FAILURE TO SUBMIT CREDITS.—Except in
3 a case in which a State program is carried out in
4 lieu of the program under this section under sub-
5 section (f), if a retail electricity or natural gas dis-
6 tributor fails to submit to the Secretary any credit
7 required for compliance with the applicable perform-
8 ance standard under subsection (b), or to pay to the
9 Secretary an applicable buyout payment under sub-
10 section (e), the Secretary shall assess against the re-
11 tail electricity or natural gas distributor a civil pen-
12 alty for each such failure in an amount equal to, as
13 adjusted for inflation in accordance with such regu-
14 lations as the Secretary may promulgate—

15 “(A) \$100 for each electricity savings cred-
16 it or buyout payment failed to be made by the
17 retail electricity or natural gas distributor; or

18 “(B) \$10 for each natural gas savings
19 credit or buyout payment failed to be made by
20 the retail electricity or natural gas distributor.

21 “(2) PROCEDURE.—The procedures under sec-
22 tion 31(c) of the Federal Power Act (16 U.S.C.
23 823b(c)) shall apply to a civil penalty assessed under
24 paragraph (1).

1 “(i) STATE LAW.—Nothing in this section supersedes
2 or otherwise affects any State or local law (including regu-
3 lations) relating to electricity savings or natural gas sav-
4 ings, to the extent that the State or local law requires
5 equal or greater electricity savings or natural gas saving
6 than the savings required by this section.”.

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